

Application Serial No. 09/765,151  
Amendment dated August 4, 2004  
Reply to Office Action dated May 5, 2004

**Conclusion:**


For the foregoing reasons, Applicants submit that all claims are patentable and a Notice of Allowance is respectfully requested.

The Commissioner is hereby authorized to charge Deposit Account No. 23-3000 in the amount of \$18.00 for two newly added claims. No additional fee is believed due with this submission. However, if any additional fee or surcharges are deemed due, please charge same or credit any overpayment to Deposit Account No. 23-3000.

The Examiner is invited to contact the undersigned attorney with any questions or remaining issues.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

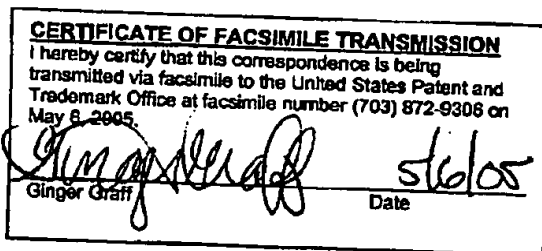
By:   
David E. Jefferies, Reg. No. 46,800

06/14/2005 SDIRETA1 00000020 233000 09765151  
01 FC:2202 18.00 DA

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2700 Carew Tower  
Cincinnati, OH 45202  
(513) 241-2324 (voice)  
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K:\PEDA27\Resp. to 1st OA at RCE.wpd

Adjustment Date: 06/14/2005 SDIRETA1  
03/28/2005 GWOTEN 00000001 233000 09765151  
02 FC:2202 25.00 CR

-30-

**PATENT**RECEIVED  
CENTRAL FAX CENTER

MAY 06 2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No: 09/765,151  
Applicant: Gilbert R. Gonzales et al.  
Filing Date: January 17, 2001  
Title: COMBINATION AND METHOD INCLUDING A VISUAL MARKER FOR  
DETERMINING COMPLIANCE WITH A MEDICATION REGIMEN  
Art Unit: 3751  
Examiner: Anu Ramana  
Conf. No.: 6299  
Atty. Docket: PEDI-27 (formerly UNSP-04)

Cincinnati, Ohio 45202

May 6, 2005

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR REFUND OF CLAIM FEE**

A response to an Office Action dated May 4, 2004 was filed in the above-identified application on August 4, 2004. That response added two new claims to the application (claims 28 and 29). Thus, the Commissioner was authorized to charge our Deposit Account No. 23-3000 in the amount of \$18.00 for the small entity fee for the addition of two claims (the rate for each additional claim over 20 on August 4, 2004 was \$9.00 per claim).

As can be seen from the fee worksheet attached hereto as Exhibit A, in August, 2004, the U.S. Patent and Trademark Office ("USPTO") calculated the fees

incorrectly in reciting that only 27 claims were in the application. In other words, the USPTO did not calculate the addition of claims 28 and 29. Thus, our deposit account was not charged the \$18.00 we authorized.

Subsequently, a response to Office Action dated November 18, 2004 was filed in the above-identified application on March 18, 2005. That response cancelled one claim (claim 20). As can be seen from the fee worksheet attached hereto as Exhibit B, in March, 2005, the USPTO recalculated the fees, and calculated the addition of two new claims (claims 28 and 29), and subtracted the one cancelled claim (claim 20) for a net gain of one claim.

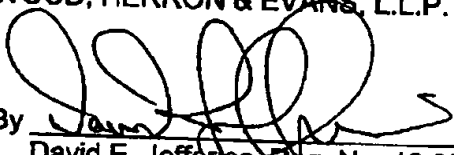
In between the August, 2004 and March, 2005 responses, the USPTO's fee structure had changed to charge \$25.00 for each claim over 20. Thus, the USPTO charged our deposit account \$25.00 for the one additional claim due to the new fee structure. A copy of our Deposit Account Statement is attached hereto as Exhibit C.

It is submitted that these charges are incorrect in that they should have been applied in August of 2004 when they were authorized at the old fee structure (\$9.00 per claim, for a total of \$18.00). Thus, it is believed that the U.S. Patent and Trademark Office has erroneously charged our deposit account \$25.00 for one additional claim under the new fee structure, when we should have been charged \$18.00 for two new claims under the old fee structure. Therefore, Applicants are entitled to a refund in the amount of \$7.00, which equals the amount overcharged, under 37 C.F.R. § 1.26(a).

Please forward a refund check in the amount of \$7.00 to the undersigned at the address below at your earliest possible convenience.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

By   
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GREGORY F. AHRENS  
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PATENT, TRADEMARK, COPYRIGHT  
AND UNFAIR COMPETITION LAW  
AND RELATED LITIGATION

EDMUND P. WOOD 1823-1868  
TRUMAN A. HERRON 1833-1876  
EDWARD B. EVANS 1838-1871

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STEVEN W. BENINTENDI, PH.D.  
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TECHNICAL ADVISORS  
HENRY M. LABODA, PH.D.

May 6, 2005

**FACSIMILE COVER SHEET**

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To: Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

From: David E. Jefferies

MAY 06 2005

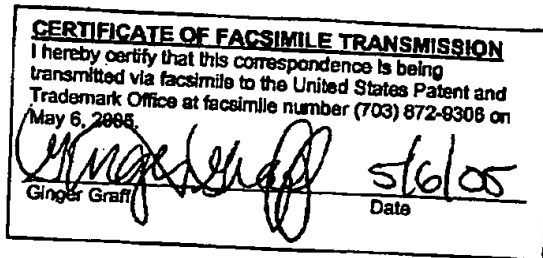
Fax: 703-872-9306

Re: Request for Refund of Claim Fee  
Serial No: 09/765,151  
Applicant: Gilbert R. Gonzales et al.  
Filing Date: January 17, 2001  
Title: COMBINATION AND  
METHOD INCLUDING A VISUAL  
MARKER FOR DETERMINING  
COMPLIANCE WITH A  
MEDICATION REGIMEN  
Art Unit: 3751  
Examiner: Anu Ramana  
Conf. No.: 6299  
Our Ref: PEDI-27 (formerly UNSP-04)

Pages: 9 (including cover sheet)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No: 09/765,151  
Applicant: Gilbert R. Gonzales et al.  
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Cincinnati, Ohio 45202

May 6, 2005

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR REFUND OF FEE FOR EXTENSION OF TIME**

A response to Office Action dated November 18, 2004 was filed in the above-identified application on March 18, 2005. The Commissioner was authorized to charge our Deposit Account No. 23-3000 in the amount of \$60.00 for the small entity fee for a one-month extension of time as set forth in 37 C.F.R. § 1.17(a)(1). However, our Deposit Account No. 23-3000 was charged \$225.00 on March 28, 2005 for the small entity fee for a two-month extension of time.

This response to Office Action, with a one-month extension of time, was originally transmitted and received by the U.S. Patent and Trademark Office on March 18, 2005 (PTO auto reply attached as Exhibit A hereto). Thus, only a one-month

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PATENT, TRADEMARK, COPYRIGHT  
AND UNFAIR COMPETITION LAW  
AND RELATED LITIGATION

EDMUND P. WOOD 1923-1988  
TRUMAN A. HERRON 1925-1976  
EDWARD B. EVANS 1936-1971

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May 6, 2005

**FACSIMILE COVER SHEET**

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MAY 06 2005

To: Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

From: David E. Jefferies

Fax: 703-872-9306

Re: Request for Refund of Claim Fee  
Serial No: 09/765,151  
Applicant: Gilbert R. Gonzales et al.  
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Pages: 11 (including cover sheet)

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MAY-06-2005 14:22

513 241 6234

513 241 6234 P.05

# Exhibit A



**PATENT APPLICATION FEE DETERMINATION RECORD**  
 Effective October 1, 2000

Application or Docket Number

09/765151

**CLAIMS AS FILED - PART I**

	(Column 1)	(Column 2)
TOTAL CLAIMS	27	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	27 minus 20 =	7
INDEPENDENT CLAIMS	2 minus 3 =	0
MULTIPLE DEPENDENT CLAIM PRESENT <input type="checkbox"/>		

\* If the difference in column 1 is less than zero, enter "0" in column 2

**CLAIMS AS AMENDED - PART II**

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT A	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total	27	27	
Independent	3	3	
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

Best Available Copy

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT B	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total			
Independent			
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT C	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total			
Independent			
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

\* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.  
 \*\* If the "Highest Number Previously Paid For" in THIS SPACE is less than 20, enter "20."  
 \*\*\* If the "Highest Number Previously Paid For" in THIS SPACE is less than 3, enter "3."  
 The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

FORM PTO-615  
(Rev. 6/03)**SMALL ENTITY TYPE**

RATE	FEE
BASIC FEE	355.00
X\$ 9=	
X40=	
+135=	
TOTAL	

**OTHER THAN SMALL ENTITY**

RATE	FEE
BASIC FEE	710.00
X\$18=	126.00
X80=	
+270=	
TOTAL	836.00

**SMALL ENTITY**

RATE	ADDITIONAL FEE
X\$ 9=	
X40=	
+135=	
TOTAL	

**OTHER THAN SMALL ENTITY**

RATE	ADDITIONAL FEE
X\$18=	
X80=	
+270=	
TOTAL	

RATE	ADDITIONAL FEE
X\$ 9=	
X40=	
+135=	
TOTAL	

RATE	ADDITIONAL FEE
X\$18=	
X80=	
+270=	
TOTAL	

RATE	ADDITIONAL FEE
X\$ 9=	
X40=	
+135=	
TOTAL	

RATE	ADDITIONAL FEE
X\$18=	
X80=	
+270=	
TOTAL	

 Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE  
 U.S. GPO: 2000-450-708/00103

MAY-06-2005 14:22

513 241 6234

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# Exhibit B

# **PATENT APPLICATION FEE DETERMINATION RECORD** Effective October 1, 2000

Application or Docket Number

09/765151

## **CLAIMS AS FILED - PART I**

	(Column 1)	(Column 2)
TOTAL CLAIMS	27	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	27 minus 20 =	7
INDEPENDENT CLAIMS	2 minus 3 =	0
MULTIPLE DEPENDENT CLAIM PRESENT <input type="checkbox"/>		

\* If the difference in column 1 is less than zero, enter "0" in column 2

## **CLAIMS AS AMENDED - PART II**

	(Column 1)	(Column 2)	(Column 3)
CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total	27	Minus	27
Independent	3	Minus	3
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

SMALL ENTITY TYPE ☐

OR OTHER THAN SMALL ENTITY

RATE	FEE
BASIC FEE	355.00
X50=	
X40=	
+135=	
TOTAL	

RATE	FEE
BASIC FEE	710.00
X518=	126.00
X80=	
+270=	
TOTAL	836.00

SMALL ENTITY

OR OTHER THAN SMALL ENTITY

RATE	ADDITIONAL FEE
X50=	
X40=	
+135=	
TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE
X518=	
X80=	
+270=	
TOTAL ADDIT. FEE	

03/24/05 Best Available Copy

	(Column 1)	(Column 2)	(Column 3)
CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total	28	Minus	27
Independent	2	Minus	3
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

RATE	ADDITIONAL FEE
X50=	25
X40=	
+135=	
TOTAL ADDIT. FEE	25

RATE	ADDITIONAL FEE
X518=	
X80=	
+270=	
TOTAL ADDIT. FEE	

	(Column 1)	(Column 2)	(Column 3)
CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total		Minus	
Independent		Minus	
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

RATE	ADDITIONAL FEE
X50=	
X40=	
+135=	
TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE
X518=	
X80=	
+270=	
TOTAL ADDIT. FEE	

\* If the entry in column 1 is less than the entry in column 2, enter "0" in column 3.  
 \*\* If the "Highest Number Previously Paid For" in this space is less than 20, enter "20".  
 \*\*\* If the "Highest Number Previously Paid For" in this space is less than 3, enter "3".  
 The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

FORM PTO-475  
(Rev. 6/00)

Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE  
U.S. GPO: 2002-450-700-0000

MAY-06-2005 14:23

513 241 6234

513 241 6234 P.09

# Exhibit C

Deposit Account Statement

Requested  
Statement  
Month: Mar-05  
Deposit  
Account  
Number: 233000

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	ATTORNEY
1-Mar	39	10906840 NOR-1224		8021	\$40.00	KGR
1-Mar	142	10965328 SSIT-87		8204	(\$210.00)	DFF
1-Mar	513	10433922 HAWE-49		8021	\$40.00	DFF
1-Mar	514	10824238 HAWE-51		8021	\$40.00	DFF
2-Mar	55	10459840 XCEN03		8021	\$40.00	WRA
2-Mar	100	28224090 333DES1-107		1112	\$100.00	DFF
2-Mar	101	28224090 333DES1-107		1312	\$130.00	DFF
3-Mar	37	10984025 14CP2		2001	\$245.00	CRE
3-Mar	71	29224281 RVI-871B-107		1112	\$100.00	DFF
3-Mar	72	29224281 RVI-871B-107		1312	\$130.00	DFF
3-Mar	75	28224280 RVI-871C-107		1312	\$100.00	DFF
3-Mar	77	29224280 RVI-871C-107		1484	\$130.00	DFF
3-Mar	184	11068122 104US		1202	\$550.00	WRA
4-Mar	1	9997990 IBM/183		1251	\$110.00	SAS
4-Mar	224	5233663 DSP-3		8021	\$40.00	DFF
4-Mar	226	5426708 DSP-3		8021	\$40.00	DFF
4-Mar	278	10922438 BARN-100A		8021	\$40.00	CRE
4-Mar	332	29224318 RVI-871A-107		2312	\$15.00	DFF
7-Mar	3	76462043 122		7004	(\$150.00)	TRR
7-Mar	341	76800301 114		7001	\$325.00	KLK
8-Mar	5	10501887 KANIA-04		2814	\$88.00	BAL
8-Mar	101	76452987 J&C-235		8003	\$100.00	DSS
9-Mar	9	10718325 WUE-29		1801	\$790.00	TJB
9-Mar	20	10906406 NOR-1224		1201	\$200.00	KGR
9-Mar	28	28224851 107		1112	\$100.00	DFF
9-Mar	30	28224851 107		1312	\$130.00	DFF
9-Mar	344	11072119 BIOP-06US		1011	\$300.00	KGR
9-Mar	345	11072119 BIOP-06US		1111	\$500.00	KGR
9-Mar	346	11072119 BIOP-06US		1311	\$200.00	KGR
9-Mar	347	11072119 BIOP-08US		1201	\$2,000.00	KGR
9-Mar	348	11072119 BIOP-08US		1202	\$1,100.00	KGR
10-Mar	24	10990658 KMC311US		8021	\$40.00	DFF
10-Mar	54	76632380 SATE-02-109		8001	\$750.00	DSS
11-Mar	13	11002164 LABV-9		8021	\$40.00	CRE
11-Mar	60	PCTAUS05/06				
	857	GMED-07WO		1702	\$296.00	KAS

CHARGED \$395.00 IN ELITE

Date	Time	From	To	Amount	Agency
11-Mar	62 857	PCT/US05/08	GMED-07WO	1703	\$364.00 KAS
11-Mar	63 857	PCT/US05/08	GMED-07WO	8007	\$40.00 KAS
14-Mar	2	9878744 DDY / 48		1253	\$960.00 WLJ
14-Mar	3	9878744 DDY / 48		1801	\$770.00 WLJ
14-Mar	4	9878744 DDY / 48		1201	\$172.00 WLJ
14-Mar	33	76632905 FSI-109A		6001	\$40.00 KGR
14-Mar	34	10906912 NOR-1228		1202	\$150.00 KGR
14-Mar	35	10906912 NOR-1228		1311	\$200.00 KGR
14-Mar	36	10906912 NOR-1228		1111	\$500.00 KGR
14-Mar	55	76087963 ROBI-17-		8004	\$300.00 DEP
14-Mar	56	76087963 ROBI-17-		6004	\$450.00 DEP
14-Mar	57	76087963 ROBI-17-		6004	\$150.00 DEP
14-Mar	58	76087963 ROBI-17-		6005	\$100.00 DEP
15-Mar	3	10083001 DDL/19		2201	\$400.00 KRH
18-Mar	1	10452387 OPSU/04A		1253	\$1,020.00 DAS
18-Mar	25	10508344		1808	\$730.00
18-Mar	205	9492032 HILB-882		1504	\$300.00 WLJ
18-Mar	265	1322196 L&P		8521	\$40.00 JDP
18-Mar	266	1325019 L&P-215		8522	\$25.00 JDP
21-Mar	10	10000276 OPME/05		2202	\$675.00 DHB
21-Mar	11	10000276 OPME/05		2201	\$300.00 DHB
21-Mar	600	76990728 FLYA-05		7001	\$325.00 TWH
22-Mar	1	10189060 HILB/456C3		1251	\$120.00 WLJ
22-Mar	2	10189060 HILB/456C3		1814	\$130.00 WLJ
22-Mar	4	10884941 LANT-C02DV		2814	\$65.00 KRH
22-Mar	5	10884941 LANT-C02DV		2201	\$200.00 KRH
22-Mar	191	2185957 MIDTF-392T2		8503	\$15.00 TWF
25-Mar	179	11021198 PMAN/36		2051	\$85.00 BAL
28-Mar	1	9765151 PEDI-27		2252	\$225.00 DEJ
28-Mar	2	9765151 PEDI-27		2202	\$25.00 DEJ
28-Mar	7	60840682 GYTR-27		8021	\$40.00 CHL
30-Mar	1	10245176 POUR-15R		1806	\$180.00 KRH
30-Mar	159	10350812 PPO/11A		2501	\$700.00 DSS

CHARGED \$510.00 IN ELITE

CHARGED \$55.00 IN ELITE

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